UNITED NATIONS

AT

Administrative Tribunal

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3 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 618

Case No. 606: SZENTTORNYAY

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero; Mr. Mikuin Leliel Balanda;

Whereas at the request of Jebon Szenttornyay, a former staff member of the United Nations Conference on Trade and Development, hereinafter referred to as UNCTAD, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 November and 31 December 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 18 December 1992, the Applicant filed an application requesting the Tribunal:

"... to rule that:

(i) The Respondent contravened the basic rules and principles of good administration, and her right to equal pay for equal work, by assigning her additional and higher level functions against a higher level post for nineteen years, without the commensurate financial compensation.

(ii) The Respondent made a commitment but failed to take the necessary administrative measures for classifying her functions at the G-7 level, the level of the post which she had been encumbering for nineteen years.

(iii) As a result of the Respondent's failure to discharge his obligation under the principle of equal pay for equal work, and to fulfil his commitment to have her functions reclassified at the G-7 level, the Applicant suffered financial losses in salaries, allowances and pension benefits.

(iv) The Applicant is entitled to payment of a sum of $25,000 as compensation for the injury she sustained as a result of the administrative irregularities, action and inaction, including non-payment of appropriate salaries and special post allowances, committed by the Respondent in connection with her case."

Whereas the Respondent filed his answer on 30 April 1993;

Whereas the Applicant filed written observations on 12 August 1993;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 18 July 1960. She was initially offered a three-month short-term appointment at the G-3, step I level as a Clerk/Stenographer. On 18 October 1960, she was granted a probationary appointment and on 1 July 1962, a permanent appointment. On 16 January 1963, the Applicant was transferred to the International Trade Relations Branch of the Department of General Economic Research and Policies and on 1 May 1966, she was promoted to the G-4 level as Secretary. On 1 January 1971, the Applicant was reassigned to the Office of the Secretary-General of UNCTAD. On 1 April 1972, the Applicant was promoted to the G-5 level and her functional title was changed to Professional Assistant. The Applicant was promoted to the G-6 level, with effect from 1 June 1991, with the functional title of Information Network Assistant. She separated from the service of the United Nations on 31 March 1992.

In July 1982, the International Civil Service Commission had approved the establishment of a seven-level grading structure (to replace the existing five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. Accordingly, all General Service posts in New York were classified under procedures set forth in administrative instructions ST/AI/301 of 10 March 1983 and ST/AI/301/Add.1 of 12 July 1983.

In accordance with the administrative instructions, on 16 January 1984, the Applicant, whose functional title at the time was Reference Assistant and her supervisor, prepared a job description of the post she encumbered - numbered EG-7-005115 - for initial classification. The Classification Review Group classified the post at the G-5 level in the Library Related occupation.

In a letter dated 9 June 1986, addressed to the Assistant Secretary-General for Personnel Services, the Applicant appealed the initial classification of the post, arguing that it should be classified at the G-7 level, essentially on the grounds that the functions of the post were not properly described. The New York General Service Classification Appeals and Review Committee (NYGSCARC) reviewed the case and recommended that the post be classified at the G-5 level. The Assistant Secretary-General for Personnel Services informed the Applicant, on 10 February 1987, of his decision to accept the recommendation.

In a memorandum dated 27 February 1987, addressed to the Assistant Secretary-General for Personnel Services, the Applicant appealed the classification recommendation by NYGSCARC and submitted a new job description signed by the Chief of the UNCTAD New York Office and approved by the UNCTAD Administration in Geneva. Having received no reply, on 12 May 1987, the Applicant inquired as to the status of her appeal. On 16 June 1987, the Chief, Administrative Review Unit, informed the Applicant that the Classification Section

of the Office of Personnel Services was conducting a review of all staff, who like herself, had requested a review of classification decisions based on the recommendations of NYGSCARC. After this review, the cases would be resubmitted to NYGSCARC.

On 30 September 1988, the Officer-in-Charge of the UNCTAD New York Office wrote to the Chief, Compensation and Classification Service, Office of Human Resources Management[1] (OHRM), asking that the Applicant's functional title be changed to "Documentation and Information Assistant". At the same time, he informed him that, on account of the "recent restructuring of the New York Office of UNCTAD", the Applicant would assume "additional responsibilities". He emphasized that the Applicant's post should be classified at the G-7 level. In a reply dated 20 October 1988, the Chief, Compensation and Classification Service, OHRM, informed the Officer-in-Charge of the UNCTAD New York Office that the Classification Service would transmit to NYGSCARC their views on each case after conducting "a thorough analysis for each Tribunal appeal case, including the use of the appropriate functional title."

On 16 May 1989, the Applicant's case was resubmitted to NYGSCARC after review and analysis by the Compensation and Classification Service, OHRM.

NYGSCARC reviewed the Applicant's case at its meeting held on 15 March 1990. According to the minutes of the meeting,

> "The Committee noted that the title of 'Information and Documentation Assistant' proposed by the appellant was not an official title and as such, could not be assigned to the post. Accordingly, the Committee recommends that the post be maintained at the GS-5 level in the Library Related occupation."

On 17 May 1990, the Chief, UNCTAD New York Office, conveyed to the Assistant Secretary-General, OHRM, that the UNCTAD Adminis-

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[1] Successor of the Office of Personnel Services

tration lent its "full support ... to the appeal of [the Applicant]" and informed him that UNCTAD was "committed to find the way on how to implement the final decision on the appeal."

The Assistant Secretary-General, OHRM, approved NYGSCARC's recommendation on 4 June 1990. On the same date, and in two separate communications, he informed the Applicant and the Officer-in-Charge of the UNCTAD New York Office of his decision. In addition, on 8 June 1990, the Assistant Secretary-General, OHRM, wrote to the Chief of the UNCTAD New York Office, explaining the grounds for his decision.

On 10 August 1990, the Director, Programme Support and Management Services, wrote to the Assistant Secretary-General, OHRM, to convey UNCTAD's "position that the [Applicant's] functions merit a significantly higher grading than the G-5 level." He expressed the hope that OHRM would "find it possible to review the matter and to come to a mutually acceptable solution outside the formal recourse channels." In a reply dated 5 February 1991, the Assistant Secretary-General, OHRM, informed the Director, Programme Support and Management Services, that: "As the case has already been reviewed by the New York General Service Classification Appeals and Review Committee and a decision taken, it is not possible to revert to them." He suggested that UNCTAD "review the situation further to determine whether a suitable higher level post could be identified to which [the Applicant] might be transferred."

On 1 March 1991, the Applicant sought the Secretary-General's agreement for submission of her appeal directly to the Tribunal. In a reply dated 24 April 1991, the Assistant Secretary-General, OHRM, advised the Applicant that:

> "The Secretary-General considers that your request to appeal the classification decision is time-barred and is thus not receivable.
>
> You may appeal this ruling on receivability directly to the Tribunal and, if the Tribunal considers that your claim is not time-barred,

> Respondent would agree that the Tribunal could then consider the merits of your appeal against the decision concerning classification of post No. EG-7-005115 which you encumbered."

On 16 May 1991, the Applicant submitted a further job description of the post she encumbered which was signed by the Applicant and by the representative of the New York UNCTAD Office. The post was identified as "EG0093115, formerly EG-7-005115" and classified at the G-6 level, with the functional title of Information Network Assistant. The Applicant was promoted to the G-6 level, with effect from 1 June 1991.

In the meantime, the Applicant appealed, to the Administrative Tribunal, the decision of 24 April 1991, that her classification appeal was time-barred. In its Judgement No. 552 rendered on 19 June 1992, the Tribunal held that the application was receivable, and retained "jurisdiction of the application for consideration of the merits following submissions by the parties with respect thereto."

On 18 December 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Failure by the Respondent to classify the Applicant's post at the G-7 level, since 1972, violates the Applicant's rights to equal pay for equal work.

2. The Applicant received a commitment from her supervisors, that the Respondent would classify her post at a higher level. This commitment was not honoured.

Whereas the Respondent's principal contentions are:

1. The classification of the Applicant's post at the G-5 level was a proper exercise of administrative discretion that complied with the applicable instructions. The classification level that resulted from this process did not violate the rights of the Applicant.

2. No commitments were made by the Administration which would entitle the Applicant to a classification level different from that resulting from the application of the regular classification standards.

The Tribunal, having deliberated from 22 October to 3 November 1993, now pronounces the following judgement:

I. The Applicant comes to the Tribunal pursuant to Judgement No. 552, in which the Tribunal ruled that the Applicant's claims were not time-barred and that her case could be examined on its merits. This being so, the Tribunal will examine the Applicant's claims in strict adherence to its decision in Judgement No. 552.

II. In this context, the Tribunal recalls that the claim of untimeliness that led to Judgement No. 552, was put forward by the Respondent in his answer to the Applicant's request for consent to direct submission to the Tribunal dated 1 March 1991. In his reply to the Applicant, the Respondent stated: "If the Tribunal considers that your claim is not time-barred, Respondent would agree that the Tribunal could then consider the merits of your appeal against the decision concerning classification of your post No. EG-7-005115 which you encumbered."

III. As a consequence, the only issue before the Tribunal is the decision classifying post No. EG-7-005115 at the G-5 level, since consent was given to the direct submission to the Tribunal of that issue only (article 7.1 in fine of the Tribunal's Statute). Therefore, all claims relating to other issues shall not be considered by the Tribunal.

IV. The Tribunal notes that the proceedings initiated by the Applicant relate to the classification of her post at the G-5 level. Subsequently, by a new administrative decision dated 20 May 1991, that has not been challenged, her post was again reviewed and

classified at the G-6 level. The Tribunal has before it a recourse procedure that is directed against an administrative decision to classify her post at the G-5 level. Despite the new decision to classify her post at the G-6 level, the Tribunal will now examine the validity of the earlier classification decision to classify the Applicant's post at the G-5 level.

V. In doing so, the Tribunal recalls its established jurisprudence and confines itself to ascertaining whether the principles of due process were respected and whether the decision was free from prejudice or other extraneous factors. The Tribunal notes, in this regard, that the application requests the Tribunal "to examine the administrative procedures, including any irregularities, defects, inconsistencies and contravention of basic principles of good administration, administrative instructions, personnel directives, breach of good faith, as well as any deviation from established practice, which are detrimental to the financial and career prospects of the Applicant." That request goes beyond what is properly before the Tribunal in this case, in involving other issues and events going back as far as 1972. In fact, the Applicant does not identify any material procedural defect in the reclassification exercise by which she claims to have been injured, and the Tribunal finds none. The Tribunal is satisfied that the classification of the Applicant's post was carried out in a valid manner and was not vitiated by prejudice or other extraneous factors.

VI. As for the Applicant's allegations that her post was a G-7 post, in the opinion of various officers connected with her work, the Tribunal recalls that the classification of posts is entrusted by the current regulations to specialized bodies within the Organization, which are not bound by the opinions or the recommendations of these officers.

VII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

New York, 3 November 1993

R. María VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

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LIMITED

AT/DEC/619
9 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 619

Case No. 672: DE ROZARIO-MILLER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Ioan Voicu; Mr. Mikuin Leliel Balanda;

Whereas at the request of Colette de Rozario-Miller, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 May 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 May 1992, the Applicant filed an application requesting the Tribunal, in essence:

"(a) to rescind the decision of the Secretary-General rejecting the unanimous recommendation of the Joint Appeals Board in favour of the Applicant;

(b) to find and rule that the Joint Appeals Board was correct in finding that the Applicant was denied her right to fair and objective consideration for promotion in both the 1986 and 1987 promotion exercises...

(c) to order that the Respondent remand the Applicant's case to the Appointment and Promotion Board for immediate rectification and that the Applicant's name be placed on the promotion register with retroactive effect from 1 October 1986;

(d) to order the Respondent, alternatively, to compensate the Applicant for lost earnings for the period 1 October 1986, through her date of separation from service at the applicable step and rate of the P-5 level;

(e) to order the Respondent to pay the Applicant the sum [of] $100,000.00 for the losses in her future pension entitlements occasioned by the Respondent's actions;

(f) to award the Applicant appropriate compensation for consequential and moral damages suffered...

(g) to fix, pursuant to article 9, paragraph 1 of the Statute and Rules, the amount of compensation to be paid in lieu of specific performance at $200,000.00...

(h) to award the Applicant, as costs, the sum of $5,000.00."

Whereas the Respondent filed his answer on 5 August 1992;

Whereas the Applicant filed written observations on 14 September 1992;

Whereas, on 12 and 15 October 1993, the Applicant submitted an additional statement and further documents and on 20 October 1993, the Respondent submitted his comments thereon;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 2 January 1967, as an Associate Editor, at the P-2 level, under a probationary contract. On 1 January 1969, she received a permanent appointment, as an Editorial Control Officer with the Department of Conference Services. On 1 April 1974, she was promoted to the P-3 level, as Programme Management Officer and transferred to the Department of Technical Cooperation for Development (DTCD). She was promoted to the P-4 level, as a Programme Management Officer on 1 April 1978.

The Applicant was assigned to the United Nations Centre for Human Settlements at Nairobi, Kenya, for a two year period, with

effect from 21 March 1979 through 1 June 1981, when she returned to Headquarters.

Between 1 July 1983 and 30 June 1985, the Applicant served as a Contracts Officer. Between 1 July 1985 and 1 March 1987, she served as Economic Affairs Officer. On 1 October 1988, the Applicant was reassigned, within DTCD, from the Water Resources Branch to the Country Programming and Evaluation Branch.

On 24 October 1991, she was reassigned, within DTCD, as Senior Programme Management Officer. She was promoted to the P-5 level, with effect from 1 May 1992 and separated from the service of the United Nations on 30 November 1992, having reached the mandatory retirement age.

The Applicant had become eligible for promotion to the P-5 level in 1983, having accumulated by that time, five years of seniority in her grade. Not having been recommended for promotion by her department, the Applicant instituted recourse proceedings, every year, from 1983 through 1987, requesting the Appointment and Promotion Board to include her name in the P-5 Senior Officer Promotion Register. She was unsuccessful.

The 1986 Promotion Review Exercise was postponed by the Secretary-General until 1987, on account of the financial crisis of the Organization. On 19 May 1986, the Director of the Natural Resources and Energy Division, transmitted to the Executive Officer for DTCD, the list of staff he was recommending for promotion in connection with the 1986 promotion review exercise "presented by grade in numerical ranking by merit". The Applicant was among the staff at the P-4 level, whom he recommended for promotion to the P-5 level. She was listed third. The Director indicated that he would support promotions to the P-5 level for all three listed candidates, including the Applicant, "should there be available posts at the P-5 level".

A departmental panel within DTCD met between June and August 1986, to review candidates for promotion within the Department. The panel consisted of seven members: two elected by the staff (one from the Professional category and one from the General Service

category), three appointed by the Administration, one representative of the then Office of Personnel Services and a Chairperson. Of the seven members of the panel, two were women. This panel reviewed candidates for promotion to a number of positions for the purpose of making recommendations to the Under Secretary-General, DTCD. On 8 August 1986, the Chairman of the Panel transmitted to the Under-Secretary-General, DTCD, its recommendations for promotion. The Applicant's name was not included in the panel's initial recommendations.

Subsequently, an additional P-5 position became available. The same panel (including the General Service staff member serving thereon) reconvened in February 1987, to make further recommendations in relation "to staff members who had fulfilled functions or had been selected for posts higher than their own", prior to the introduction of the Vacancy Management System. The Panel could not reach agreement as to whether the Applicant or another staff member should be recommended for promotion. There was a tie vote. In a communication dated 23 February 1986, informing the Under-Secretary-General, DTCD, of this result, the Chairman asked him to make his own selection, "taking into account views expressed by the members of the Panel" which were set forth in the communication.

On 11 March 1987, the Under-Secretary-General, DTCD, was provided with additional information concerning the four candidates recommended for promotion to the P-5 level by the Panel. The Applicant's name did not appear on the 1986 P-5 Senior Officer Promotion Register. Accordingly, on 26 January 1987, the Applicant instituted a recourse procedure before the Appointment and Promotion Board (APB) asking to be included in the 1986 Senior Officer Promotion Register. This memorandum was supplemented by additional memoranda to the Chairman of the APB on 30 March, 2 April and 16 July 1987. On 6 April 1988, the Chairman of the APB informed the Applicant that "notwithstanding the additional information presented in your communication, the Board's re-examination of your case did not reveal that there had been an omission so significant as to afford grounds for amending its decision".

On 14 June 1989, the Applicant instituted a recourse procedure, asking the Board to include her name in the 1987 Senior Officer Promotion Register, but was unsuccessful.

On 21 February 1991, the Applicant requested the Secretary General to review the administrative decision not to promote her to the P-5 level.

Having received no reply, on 10 May 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 3 December 1991. Its conclusions and recommendations read, in part, as follows:

> "Conclusions and recommendations
>
> 35. ...the Panel finds that the Appellant was denied the opportunity in the 1986 and 1987 promotion exercises to be considered fairly and without discrimination for promotion to the P.5 level.
>
> 36. The Panel therefore recommends that she be considered for promotion as soon as possible.
>
> 37. In addition, the Panel finds that the denial of her right to be considered for promotion objectively and fairly by the properly constituted bodies in accordance with established procedures, without outside interference and prejudice, and with due account being taken of the special guidelines relating to the equal treatment of women, amounts to discrimination.
>
> 38. The Panel considers that the Appellant is therefore entitled to compensation for the loss of the opportunity to fill a post at a higher level, commensurate with her acknowledged qualifications and abilities, and for the potential financial loss resulting therefrom.
>
> 39. In view of the fact that the Appellant is approaching the end of her career, even a promotion now would not materially compensate for that loss, especially in respect of her pension entitlements.
>
> 40. The Panel therefore recommends, unanimously, that an amount equal to one year's net salary, at her present grade and step, should be paid to her as compensation".

On 9 January 1992, the Secretary-General transmitted to the Applicant a copy of the Board's report and informed her as follows:

> "The Secretary-General has re-examined your case in the light of the Board's report. It should be noted:
>
> (a) that promotion is within the Secretary-General's discretion; and
>
> (b) that, while there were some procedural irregularities in your case, there is no basis to conclude that, had such irregularities not taken place, you would have been promoted.
>
> In these circumstances, where, moreover, there is no other evidence of quantifiable damage, the Board's recommendation for payment of one year's net base salary is excessive and cannot be accepted. At the same time, the Secretary-General wishes to express his regret that irregularities occurred in your case and he has decided that you be paid compensation in the amount of one thousand dollars (US$1,000). He has also decided, in accordance with the Board's recommendation in paragraph 36 of the report, that you be given consideration for promotion as soon as possible."

On 31 May 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was deprived of fair and impartial consideration for promotion in 1986 and 1987 by the interjection of extraneous considerations and the utilization of irregular procedures in the promotion review.

2. The interjection of gender discrimination further compromised the fairness of the promotion process in her case, since "a pervasive pattern of discrimination, clearly reflected in the statistical evidence put forth by the Applicant to the JAB regarding the number of women at her level who have been promoted vis-a-vis their male counterparts is prevalent in the Secretariat".

Whereas the Respondent's principal contentions are:

1. The Applicant received fair and impartial consideration for promotion during the 1986-1987 promotion reviews. Procedural irregularities did not have any identifiable effect on the outcome of those promotion exercises, and were, therefore, adequately compensated by damages.

2. The Applicant's claim of gender discrimination is not supported by credible evidence. Mere assertions of statistical probability are insufficient to prove specific discrimination.

3. The Applicant's plea for damages is highly speculative in nature, not supported by evidence, and is inconsistent with the practice of this Tribunal. The Secretary-General's response to the JAB decision provides adequate compensation for any irregularities that occurred before or during the promotion reviews.

The Tribunal, having deliberated from 26 October to 9 November 1993, now pronounces the following judgement:

I. The Applicant appeals from a decision of the Secretary-General dated 9 January 1992, that although there were some irregularities in the 1986 promotion exercise which affected the Applicant, no basis existed for concluding that, had these irregularities not occurred, she would have been promoted. The Secretary-General, finding no other evidence of quantifiable damage, also decided that the JAB recommendation for payment of one year's net base salary was excessive and declined to accept it. However, the Secretary-General expressed regret that irregularities occurred and decided to award the Applicant compensation in the amount of $1,000. He accepted the JAB recommendation that the Applicant be considered for promotion as soon as possible. In fact, the Applicant was promoted to the P-5 level, a few months later. The Applicant asks for rescission of the Secretary-General's rejection of the JAB's recommendation for monetary compensation. She also asked for a ruling that she was denied fair and objective consideration for promotion in both the 1986 and 1987 promotion

exercises. The Applicant requests that the Tribunal should order the Secretary-General to remand the Applicant's case to the APB and place her name on the P-5 Senior Officer Promotion Register, with effect from 1 October 1986, or alternatively, order that she be compensated for lost earnings, calculated at the P-5 level, for the period from 1 October 1986 to the date of her separation. In addition, the Applicant requests compensation in the amount of $100,000 for losses in her future pension entitlements and compensation for moral and consequential damages. The Applicant also asks the Tribunal to fix, pursuant to article 9.1 of its Statute, $200,000 as compensation in lieu of specific performance. Finally, the Applicant asks for an award of costs in the sum of $5,000. In addition, the Applicant requests that oral hearings be held.

II. The Tribunal considers that the information before it is adequate for resolution of this case and therefore denies the request for oral hearings.

III. With respect to the 1986 promotion exercise, the Applicant's position is that it was tainted, as far as her candidacy for promotion to the P-5 level was concerned, by (1) discrimination against her on account of her gender, (2) the participation of her supervisor, at the instance of her Department, on a Departmental Internal Review Panel and, later, as an alternate member selected by the staff to the APB, (3) the participation of a General Service staff representative on the Internal Review Panel considering her candidacy for the P-5 level, and (4) a communication from the acting chairman of the Internal Review Panel to the Under-Secretary-General in charge of her Department, relating to an evenly divided vote between her candidacy and that of another staff member in the Internal Review Panel. The Tribunal will consider each of these issues.

IV. With respect to the claim that there was a pattern of gender discrimination against the Applicant and against women in general in the Applicant's Department, the Tribunal is unable to conclude that the Applicant has met her burden of proving such an allegation by substantial evidence. The only basis for the Applicant's contention is an alleged statistical disparity between the percentages of males and females promoted by the Department. Without more, such a generalized showing is insufficient to establish that the Applicant or anyone else was discriminated against on account of gender. The JAB, likewise, concluded that this was insufficient to enable it to come to a conclusion that gender-based discrimination had been proven.

V. To the contrary, the evidence shows that the Director of the Applicant's Division had no hesitation in expressing his willingness to support the Applicant's candidacy and there is no evidence whatever that the Department's Internal Review Panel considering her candidacy was in any way negatively influenced by considerations of her gender.

VI. With respect to the Applicant's claims regarding the role of her supervisor on both the departmental Internal Review Panel and as an alternate member of the APB, the Tribunal concludes that this constituted a procedural irregularity. In the Tribunal's view, there would have been no objection to the Applicant's supervisor functioning as a member of either the Internal Review Panel or the APB, but he could not be both. Although there is no evidence that the Applicant's supervisor was improperly biased against her, once he became involved, through his membership in the Internal Review Panel, in the Department's recommendation to the APB to promote a particular candidate, he, in a sense, thereby became an advocate for the departmental position. He should not, thereafter, have participated in the APB's consideration of the Applicant's candidacy because of either the reality or the appearance of being unable to function with the independence, objectivity and open-mindedness

called for at the APB level. In short, this duality compromised the fair treatment to which staff members are entitled in the consideration of their candidacy by the APB. He should have recused himself from participation in the APB's consideration of the post for which the Applicant was a candidate. His failure to do so constituted an irregularity. However, the Tribunal does not consider that this case, in which there was no pending claim or finding of discrimination, is necessarily governed by the Tribunal's Judgement No. 507, Fayache (1991), paragraph XIV. All the more so, because the individual involved was not an Assistant Secretary-General, acting at the same time as chairman of the APB,

VII. With respect to the Applicant's claim regarding the impropriety of the participation in the Internal Review Panel of a General Service staff member, the Tribunal recognizes that staff rule 104.14 does not apply. A departmental internal review panel merely serves as a means for the department's staff to provide input prior to any departmental recommendations to the APB. Nevertheless, the Tribunal shares the view of the JAB, that the General Service staff member's participation was an irregularity adversely affecting the Applicant's candidacy, particularly, because it resulted in a tie vote. If it is thought that staff members being considered for promotion should be reviewed only by persons who are at or above the level to which promotion is contemplated, it seems illogical to the Tribunal that - despite the fact that the process does not fall, technically, within staff rule 104.14, - an individual who does not meet that criterion should be placed in a position of being able to cast a vote in the promotion review of a candidate at a higher level or take part in the decisions thereof.

VIII. With respect to the claim of irregularity concerning a communication to the Under-Secretary-General, by the acting chairman of the Internal Review Panel, which was forwarded after the Panel had been evenly divided, the Tribunal does not consider that this constituted an irregularity. The chairman, or an acting chairman,

would have been free at the time of the Panel's tie vote to have submitted, along with it, to the Under-Secretary-General, the sort of supplementary factual data contained in the communication involved, as well as his reasoned personal assessment of that data. Nothing in the communication violated the terms of reference of the Internal Review Panel and the fact that it was submitted after the evenly divided vote is of no consequence. That, as the JAB speculated, this communication may have helped tip the balance against the Applicant, insofar as the ultimate departmental recommendation was concerned, is not, in the view of the Tribunal, an irregularity.

IX. With respect to the 1987 promotion review, it does not appear that the JAB addressed itself to any issue other than the broad claim of gender-based discrimination with which the Tribunal has dealt above. The JAB report states, with regard to the Applicant's 1987 review that, "according to a memorandum by the Deputy Executive Officer of DTCD, ..., there was 'no vacant post when the [1987] review took place except for those posts which were already under circulation through the Vacancy Management System. No one, not just the [Applicant], was therefore reviewed in any serious manner by the internal review panel'." Moreover, the application notes that the Applicant's supervisor died during the course of the 1987 promotion exercise. It is unclear from this and from the preceding quotation from the JAB report, whether any of the Applicant's contentions, other than that of gender-based discrimination, which has been rejected by the Tribunal, apply to the 1987 exercise. In any event, the Tribunal finds that, because of the irregularities noted above, the Applicant was deprived of the fair consideration to which she was entitled during the 1986 promotion exercise. The Tribunal recognizes, of course, that even if there had been no irregularities, there is no assurance that the Applicant would have been promoted. In fact, the successful 1986 candidate for the P-5

post for which the Applicant was being considered, was a staff member other than the person recommended by the Applicant's Department.

X. In the circumstances of this case, the Tribunal finds that the $1,000 award to the Applicant by the Secretary-General's decision is insufficient compensation for the unfair treatment she received. Accordingly, the Tribunal orders that an additional $5,000 be paid to the Applicant as compensation for the unfair treatment described above.

XI. The Applicant has submitted to the Tribunal additional observations raising certain issues that were not considered by the Joint Appeals Board. Accordingly, they are not properly before the Tribunal under article 7 of its Statute.

XII. In view of the foregoing, the Tribunal orders that:

1. The Respondent pay $5,000 to the Applicant;
2. Decides that all other claims are rejected; and
3. Declines to make any award of costs in keeping with the policy announced by it in Judgement No. 237, Powell (1979).

(Signatures)

Jerome ACKERMAN
President

Ioan VOICU
Member

Mikuin Leliel BALANDA
Member

New York, 9 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary

UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/620
9 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 620

Case No. 675: GRIPARI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen; Mr. Mikuin Leliel Balanda;

Whereas, on 16 January 1992, Paul Gripari, a former staff member of the United Nations Development Programme, hereinafter referred to as UNDP, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 May 1992, the Applicant, after making the necessary corrections, filed a corrected application requesting the Tribunal:

"...to find that:

(a) the Respondent's decision not to grant the Applicant's after-service health insurance was based on an ill-founded assessment of the situation;

(b) the Respondent denied the Applicant due process by:

(i) failing to respond to his request for a conciliatory procedure,

(ii) accepting the Joint Appeals Board report.

(c) the Respondent has failed to properly and fairly administer his staff, specifically the Applicant, by misinforming the

Applicant on the possibility of obtaining after-service health insurance.

...

(a) the Respondent to grant after-service insurance to the Applicant,

or failing (a)

(b) the payment of compensation for the fact that the Applicant has not received medical insurance since his retirement in 1981,

(c) the further payment of compensation for the moral suffering of an amount equivalent to three years net base salary at the level he was encumbering at the date of his retirement."

Whereas the Respondent filed his answer on 16 October 1992;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP on 29 January 1965, as an Assistant Resident Representative in Mogadishu, Somalia, on a two-year fixed-term appointment. He served on a succession of fixed-term appointments at various UNDP Field Offices until his retirement on 31 July 1981.

From 1 June to 31 July 1965, the Applicant was a participant in the United Nations Headquarters contributory medical insurance plan provided under the Blue Cross/Aetna Group Insurance Policy. With effect from 1 August 1965, the Applicant canceled his participation in this plan and obtained non-contributory health insurance coverage, pursuant to United Nations staff rule 206.4 then in force, which provided for automatic insurance coverage by the Organization for all staff serving in field duty stations.

On 27 March 1967, the Director of Personnel announced to the staff, in administrative instruction ST/AI/172, that the existing health insurance schemes for UN staff had been extended to provide for after-service coverage. He informed them of the terms and conditions on which such coverage would be provided.

On 7 June 1972, the Officer-in-Charge of the UNDP Bureau of Administrative Management and Budget announced to all UNDP international field staff members, in circular UNDP/ADM/FIELD/21, that United Nations staff rule 206.4 was no longer in force, and that reimbursement of medical expenses under that rule would cease with effect from 1 July 1972, "for all international field staff members under the 100 and 200 Series of the Staff Rules". Such staff were advised to join the contributory Van Breda medical insurance plan.

On 29 June 1972, the Applicant submitted to the United Nations Insurance Unit an application for enrollment in the Van Breda insurance plan and became a participant in the plan, with effect from 1 July 1972.

On 5 March and 2 September 1980, the Applicant, in view of his expected retirement and separation from the Organization in 1981, wrote to the Director of Personnel, seeking information on after-service health and life insurance coverage.

The Division of Personnel, UNDP, transmitted the Applicant's request to the Chief of the Insurance Unit of the United Nations, who, on 13 May 1981, informed the Applicant as follows:

> "... We have reviewed your medical insurance participation records and would inform you that by 31 July 1981, you will be short by 8 months towards completing the 10-year contributory participation requirement for after-service health insurance coverage. Our records indicate that in addition to your current participation which began on 1 July 1972, you had been covered under the Headquarters medical insurance plan from 1 June 1965 to 31 July 1965 for a total contributory participation of 9 years and 3 months..."

On 31 July 1981, the Applicant separated from the service of the Organization.

On 6 December 1982, the Applicant requested the Division of Personnel, UNDP, to review his eligibility for after-service health insurance and consider the possibility of revalidating "the gap in the 10 year period by paying the related dues".

On 22 June 1983, the Division of Personnel, UNDP, transmitted to the Applicant a communication dated 17 June 1983, from the Chief of the Insurance Unit, United Nations, advising him that:

> "...it would not be possible to revalidate the gap in the ten year period for purposes of after-service health insurance by paying the related premium. The eligibility conditions for the United Nations After-Service Health Insurance Scheme (ASHI) were established in accordance with provisions approved by the General Assembly and an indispensable condition for eligibility is to have participated during employment in a contributory health insurance scheme of the United Nations or any of the agencies in the common system for a minimum of ten years. Since [the Applicant] did not meet the ten-year contributory participation requirement at the time of his separation from service with the Organization, he is not eligible to participate in ASHI."

On 9 July 1985, the Personnel Officer informed the Applicant that he was not eligible for after-service health insurance coverage, since he had not accrued the minimum of 10 years contributory service required to qualify.

On 8 November 1985, the Applicant sought the assistance of the UNDP Ombudsman Panel. In its report dated 22 March 1990, the Panel asked the Director of Personnel to endeavour "to find a solution (such as special leave without pay for nine months)" and allow the Applicant to accumulate the required ten years of contributory participation. The Applicant had indicated that he was willing to pay his portion of the contributions, together with the Organization's, in order to meet the 10 year requirement.

On 15 October 1990, the Chief, Policies and Compensation Section, Division of Personnel, UNDP, informed the Ombudsman Panel that it was not possible to make an exception in the Applicant's case and that the administrative decision to deny after-service health insurance coverage would be maintained.

On 2 December 1990, the Applicant requested administrative review of this decision. In a reply dated 14 February 1991, a

Senior Policy Officer at the UNDP Division of Personnel informed the Applicant that the decision would be maintained as he had "not been a contributory participant of a United Nations health insurance plan for the qualifying period of ten years".

On 14 March and 22 April 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 1 October 1991. Its recommendation reads as follows:

> "Recommendation
>
> 26. ...the Panel unanimously agreed that the decision of the Administrator of UNDP that the Appellant is not eligible to participate in the after-service health insurance scheme of the UN, had been properly taken and did not violate the Appellant's rights. However, bearing in mind the long service of the Appellant and the fact that he fell short of the required ten years by eight months, the Panel recommended that the Secretary-General should reconsider the possibility of equitable relief to the staff member in the light of the Ombudsman Panel's proposal of 22 March 1990, namely, 'to find a solution (such as special leave without pay for nine months) which would indeed allow the staff member to have the ten years of contributory participation and solve a problem which has been pending since 1981 and concerned a loyal staff member of more than seventeen years of honourable service.'"

On 29 October 1991, the Director, Office of the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the Board's report and stated as follows:

> The Secretary-General has re-examined your case in the light of the Board's report. He fully shares the Board's conclusion that the contested decision was properly taken and did not violate your rights.
>
> As recommended by the Board, the Secretary-General has given careful consideration to 'the possibility of equitable relief ... in the light of the Ombudsman Panel's proposal'. Bearing in mind that exceptions have not been made in the many other cases of staff members who, like you, have fallen short of the period of contributory service required, the Secretary-General has concluded that it would not

be appropriate to grant you, through the fiction of a reinstatement for the months necessary to complete such requirement and which would go back ten years, what has been denied to others in a similar situation.

The Secretary-General has therefore decided to maintain the contested decision and to take no further action on the case."

On 21 May 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Being stationed in the field when administrative instruction ST/AI/172 was issued, the Applicant was not aware of the implications of the circular. Otherwise, he would have joined the Van Breda scheme in 1967 or earlier.

2. The Applicant was not informed that the UN Headquarters Group Medical Insurance Plan which covered him did not provide for after service insurance.

Whereas the Respondent's principal contentions are:

1. Ten years contributory service in a United Nations Health Plan is a mandatory prerequisite for participation in the subsidized United Nations After-Service Health Insurance Scheme.

2. The eligibility requirements for the After-Service Health Insurance Scheme were promulgated in an administrative instruction. Failure to become acquainted with them is no excuse for not meeting them. The Applicant's rights to be considered for After-Service Health Insurance Scheme have been fully respected.

The Tribunal, having deliberated from 27 October to 9 November 1993, now pronounces the following judgement:

I. The Applicant appeals from the Respondent's decision, dated 29 October 1991, adopting a JAB finding that the Applicant had no legal entitlement to be included in the Organization's after-service

health insurance programme. The Respondent also considered, but rejected, a recommendation of the JAB regarding the possibility of equitable relief "through the fiction of reinstatement", dating back ten years, in order that the Applicant be deemed to have completed the months of contributory participation in the Organization's health insurance programme he needed for coverage by after-service health insurance. The Respondent concluded that such relief would not be appropriate, since it had been previously denied uniformly to other staff members similarly situated.

II. The Tribunal considers that the information before it is adequate for the resolution of this case and therefore denies the request for oral hearings.

III. The Applicant asks the Tribunal to find that the Respondent's decision was based on an ill-founded assessment, that the Applicant was denied due process by the Respondent's failure to agree to a request by the Applicant for a conciliatory procedure, and by his refusing to accept the JAB recommendation for equitable relief. In addition, the Applicant asks the Tribunal to find that the Respondent misinformed the Applicant on the possibility of obtaining after-service health insurance. Based on these contentions, the Applicant asks the Tribunal to order the Respondent to grant after-service insurance coverage to the Applicant or, in the alternative, to order compensation.

IV. The JAB rightly found that, at the time of the Applicant's retirement, ten years of contributory service in a UN health plan was a mandatory requirement for participation in the after-service health insurance programme subsidized by the Organization. This programme was established by administrative instruction ST/AI/172 dated 27 March 1967, following the acceptance by the General Assembly of the proposals by the Secretary-General regarding the programme. In order to be eligible, a staff member leaving the

service of the Organization on retirement had to have been a contributory participant in a UN health insurance plan for ten years. Paragraphs 3 and 8 of administrative instruction ST/AI/172, embody this requirement. Although the General Assembly subsequently approved, with effect from 1 January 1984, modifications to the eligibility requirements which, had the Applicant retired on or after that date, would have been of benefit to him, the Applicant was not able to take advantage of them since he retired from the Organization in July 1981.

V. The Applicant says that, although he knew of administrative instruction ST/AI/172, he was not made aware of its implications. The Tribunal considers that this provides no basis for the relief sought by the Applicant. It was his responsibility to understand the provisions and implications of the administrative instruction. The jurisprudence of the Tribunal has consistently so held. (Cf. Judgement No. 452, Acebes (1989), para. IX; Judgement No. 419, Greenham (1988), para. IX). Moreover, as the JAB noted, the Applicant was employed in administrative work as a UNDP Assistant Resident Representative, and "could be expected to have been more familiar with the administrative instructions and with UN administrative policy than the average staff member." If the Applicant had any questions regarding the administrative instruction, he should have addressed them, in time, to the appropriate UN office.

VI. In fact, it appears that, for a time in 1965, the Applicant had an opportunity to, and did, participate in a UN contributory medical insurance plan. But he chose to cancel his participation in that plan so that he could obtain non-contributory reimbursable health insurance coverage, which he maintained even after he could have participated in a contributory plan, pursuant to administrative instruction ST/AI/172. He joined the contributory plan only after

he was informed that his reimbursable insurance coverage would be terminated. As a result, by the time he retired in 1981, his total period of contributory participation was less than ten years.

VII. What the Applicant, in effect, asks of the Tribunal is that it alter, for his benefit, the terms of an administrative instruction, and disregard the action of the General Assembly, in order to provide after-service health insurance coverage to him, despite his failure to meet the explicit requirement of a minimum of ten years contributory participation. The Tribunal has held repeatedly that it is not empowered to create such exceptions. Action of that nature is within the legislative province of the General Assembly, not within the competence of the Tribunal. Hence, the Applicant's plea that the Respondent be ordered to grant him after-service insurance must fail.

VIII. It follows from the foregoing that no valid basis exists for holding that the Respondent's acceptance of the JAB report was irregular, much less for finding that he thereby denied the Applicant due process. Nor was there any denial of due process with respect to the Applicant's invocation of a conciliatory procedure. The record shows that the Respondent considered, as others in the Administration had done previously, the suggestion that some form of equitable relief be accorded the Applicant. This suggestion was also made by a member of the Ombudsman Panel and was echoed by the JAB. The Respondent's decision, as noted above, explains why the suggestion for equitable relief was rejected. The explanation, obviously followed due consideration. It was in conformity with the applicable norms and was neither motivated by extraneous factors nor otherwise flawed. No denial of due process occurred. Finally, it is plain that the Applicant was not misinformed regarding the possibility of obtaining after-service health insurance. Accordingly, on all counts, the Respondent's decision was both valid and lawful.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Vice-President

Mikuin Leliel BALANDA
Member

New York, 9 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary

UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/621
9 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 621

Case No. 671: BERREZOUG

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero; Mr. Mikuin Leliel Balanda;

Whereas at the request of Annie K. Berrezoug, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 28 February and 31 May 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 31 May 1992, the Applicant filed an application requesting the Tribunal, inter alia:

"...

(a) to rescind the decision of the Secretary-General to maintain his contested decision and to take no further action;

(b) to find and rule that the Joint Appeals Board erred as a matter of law in deciding to make no recommendation in support of the Applicant's appeal;

(c) to find and rule that the conclusions of the Joint Appeals Board were flawed in that they failed to take into consideration the substance of the Applicant's appeal...

(d) to order the Respondent to submit the Applicant's post for reclassification to the Professional level with retroactive effect to

1 January 1985 and to grant the Applicant all her rights and entitlements as incumbent;

(e) to award the Applicant appropriate compensation for the actual, and consequential and moral damages suffered by the Applicant as a result of the Respondent's action or lack thereof, equivalent to the difference between her existing salary and entitlements and those at the appropriate step of the P-2 level, including applicable pension coverage, retroactive to 1 January 1985;

(f) to further award the Applicant the sum of $50,000.00 for the moral injuries suffered by her and for the damage to her career and reputation occasioned by the Respondent's actions;

(g) to fix, pursuant to article 9, paragraph 1 of the Statute and Rules of the Tribunal, the amount of compensation to be paid in lieu of specific performance at $100,000.00, calculated as follows:

- Lost salary, allowances and benefits;
- Lost pension entitlements;
- Moral damages and damages to her career;

(h) to award the Applicant, as costs, the sum of $3,000.00."

Whereas, the Respondent filed his answer on 6 August 1992;

Whereas the Applicant filed written observations on 7 October 1992;

Whereas, on 11 October 1993, the Applicant submitted an additional statement and further documents;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 4 May 1971, as an Administrative Clerk at the G-3 level, on a three-month fixed-term appointment. She served on a series of fixed-term appointments until 1 May 1972, when she received a probationary

appointment. On 1 May 1974, she was granted a permanent appointment and was assigned to the World Food Conference as an Acting Personal Assistant. From 8 October 1974 to 1 February 1975, she was granted a special post allowance to the G-4 level. The Applicant was reassigned within the Department of Economic and Social Affairs and on 1 October 1975, she was promoted to the G-4 level, as a Senior Administrative Clerk. On 1 April 1978, the Applicant was transferred to the Department of Technical Co-operation for Development (DTCD). She was promoted to the G-5 level, with effect from 1 January 1985 and her functional title was changed to Fellowships Assistant. On 9 May 1988, the classification level of the Applicant's post was changed from G-5 to G-6, and the Applicant was promoted to the G-6 level, with retroactive effect from 1 January 1985.

In July 1982, the International Civil Service Commission had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for those seven-levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was submitted for initial classification to the Classification Service. The Applicant's post was classified at the G-5 level, with the functional title of Fellowships Assistant.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related

appeals procedure." The New York General Service Classification Appeals and Review Committee (NYGSCARC) was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

On 13 June 1986, the Applicant, together with another General Service staff member performing similar functions, appealed the initial classification of their posts. They argued that "the functions of the jobs were not properly reflected in the previous job description" and that "similar functions in the same Department are carried out by officers at the Professional level of P-2 and above".

NYGSCARC reviewed the appeal and recommended that the level of the post be maintained. On 31 January 1987, the Assistant Secretary-General for Human Resources Management (OHRM) informed the Applicant that he had approved NYGSCARC's recommendation.

In May 1987, the Assistant Secretary-General, OHRM, established a Working Group, pursuant to information circular ST/IC/87/24, to carry out an overall review of the outcome of the initial classification exercise and "focus primarily on the managerial and organizational problems that the classification exercise may have created." Further to the Working Group's recommendation, the Assistant Secretary-General, OHRM, instructed the Classification Service to carry out a review of posts identified by departments as examples of inconsistent classification ("the inconsistency review"). The post encumbered by the Applicant was included in the list of posts identifed by DTCD.

On 3 November 1987, the Applicant lodged a complaint with the Panel on Discrimination and Other Grievances (the Panel on Discrimination) alleging that her post should have been classified at the professional level.

As a result of the review by the Classification Service and in accordance with the recommendations of the Working Group

conducting the inconsistency review, on 9 May 1988, the Assistant Secretary-General, OHRM, approved the reclassification of the post encumbered by the Applicant from the GS-5 to the GS-6 level, with retroactive effect from 1 January 1985. On 28 June 1988, the Applicant and another staff member wrote to the Assistant Secretary-General, OHRM, requesting "a thorough investigation into our functions to determine the level which seems to have been reached merely on speculation and not facts."

In a memorandum dated 10 February 1989, the Coordinator of the Panel on Discrimination informed the Assistant Secretary-General, OHRM, inter alia, that the Applicant and the other staff member had "...put forth Professional job descriptions and descriptions of their functions...". The Panel recommended that "...an unbiased job survey and assessment should be undertaken ..." and that "a job audit be undertaken without further delay".

On 28 April 1989, the Assistant Secretary-General, OHRM, advised the Chairman of the Panel on Discrimination that, under its terms of reference, it could "only determine whether the classification exercise was carried out impartially from a procedural point of view, in accordance with established guidelines". He observed that the Panel on Discrimination's "recommendation de facto has a connotation of substantive review and would mean re-opening the classification process for these posts". It would therefore "create a situation discriminatory with regard to the other staff members who were in the same situation but who did not make recourse to the Panel...".

On 30 March 1990, the Applicant requested the Secretary-General to review that administrative decision. Having received no reply, on 25 June 1990, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 30 August 1991. Its conclusion and recommendation read as follows:

"Conclusion and recommendation

20. In the Panel's view, the Assistant Secretary-General, OHRM, had acted within his discretionary authority when he decided not to act on the recommendation of the Panel on Discrimination and Other Grievances and to convey his decision to the Coordinator of the Panel. In brief, the Panel does not consider the administrative decision of the Assistant Secretary-General, OHRM, as constituting a non-observance of the appellant's terms of appointment or any condition of pertinent regulations and rules.

21. In view of the aforesaid, the Panel unanimously decided to make no recommendation in support of this appeal".

On 4 September 1991, the Acting Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the Board's report and informed her that the Secretary-General had decided to maintain the contested decision and "to take no further action on [the] case.

On 31 May 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent did not fulfil his obligation to ensure that the classification of her post was established in a fair and objective manner.

2. The JAB erred as a matter of law in "narrowly" deciding the Applicant's appeal on the limited question of whether the Respondent was required to accept recommendations of the Panel on Discrimination.

3. The Respondent has "arbitrarily and without justification" rejected the recommendation of the Panel on Discrimination.

Whereas the Respondent's principal contentions are:

1. The instructions governing the classification procedures do not oblige the Respondent to conduct a job audit.

2. Reports of the Panel on Discrimination constitute recommendations which the Respondent may freely appraise. Rejection of the Panel's recommendation did not violate the Applicant's rights.

The Tribunal, having deliberated from 28 October to 9 November 1993, now pronounces the following judgement:

I. The Applicant's post was classified at the G-5 level and she appealed against this decision, maintaining that her post should be classified in the Professional category. Her appeal was considered by the competent bodies and rejected. She did not seek review by the Tribunal. However, the Applicant complained to the Panel on Discrimination and Other Grievances (the Panel on Discrimination).

II. Before the Panel on Discrimination finished its investigation and submitted its report, the classification of the Applicant's post was again considered by the "inconsistency review" Working Group set up under information circular ST/IC/87/24. As a result, her post was upgraded to the G-6 level.

III. The Applicant was not satisfied with this classification. Although she announced her intention of requesting a review, she never did so.

IV. In its report, the Panel on Discrimination recommended that, in view of certain elements which might warrant classifying the post in the Professional category, an audit should take place.

V. The Assistant Secretary-General for Human Resources Management, after considering the Panel on Discrimination's report,

decided not to take any action on its recommendation, because this would be tantamount to reopening the classification process for this purpose and would accord the Applicant yet another review, a remedy not open to other staff members.

The Applicant comes before the Tribunal appealing this decision and asks that an oral proceeding be held. The Tribunal finds that the information before it is adequate for resolution of this case and therefore denies the request.

In this context, the Tribunal notes:

(a) That as far as the classification of her post is concerned, the Applicant availed herself of the appeals process, but did not submit a timely application to the Tribunal. Accordingly, the validity of the classification is not properly before the Tribunal;

(b) That the authority of the Panel on Discrimination does not encompass recommendations regarding the substantive elements of the classification process;

(c) That acceptance of the Panel on Discrimination's recommendations is not mandatory. While the Respondent is bound to consider them, he is not bound to follow them. He may, in the reasonable exercise of his discretion, decline to do so;

(d) That, according to the current Regulations and Rules, and the jurisprudence of the Tribunal, the decision to conduct an audit as part of the classification process is left to the discretion of the bodies involved in such process;

(e) That, holding an audit, as recommended by the Panel on Discrimination, would, under the circumstances of the case, be tantamount to reopening the classification process;

(f) That the refusal by the Respondent to adopt the Panel on Discrimination's recommendation is the only issue before the Tribunal;

(g) That the other points raised by the Applicant in her application, namely those connected with the outcome of the "inconsistency review" are, in essence, an untimely attempt by the

Applicant to have the Tribunal consider matters that are not properly before it, and which are therefore alien to the case.

VI. For the foregoing reasons, the Tribunal finds that the Respondent acted within his competence in not following the Panel on Discrimination's recommendation.

VII. Accordingly, the Tribunal rejects the Applicant's pleas.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

New York, 9 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary